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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION
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15 JAIME GONZALEZ CORTES,) ED CV 12-01030-SH
16)
17 Plaintiff,) MEMORANDUM DECISION
18 v.)
19 MICHAEL J. ASTRUE,)
20 Commissioner of Social Security)
21 Administration,)
22 Defendant.)

23 This matter is before the Court for review of the Decision of the
24 Commissioner of Social Security denying plaintiff's application for Social Security
25 Disability Insurance benefits. Pursuant to 28 U.S.C. § 636(c), the parties have
26 consented that the case may be handled by the undersigned. The action arises under
27 42 U.S.C. § 405(g), which authorizes the Court to enter judgment upon the
28 pleadings and transcript of the record before the Commissioner. The plaintiff and

1 defendant have filed their pleadings (Plaintiff's Brief in Support of Complaint
2 ["Plaintiff's Brief"]; Defendant's Brief in Support of Answer ["Defendant's
3 Brief"]), and the defendant has filed the Certified Administrative Record [AR].
4 After reviewing the matter, the Court concludes that the Decision of the
5 Commissioner should be reversed and remanded.

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7 I. PROCEEDINGS

8 Plaintiff filed an application for Social Security Disability benefits on
9 November 3, 2009, alleging onset of disability as of July 13, 2008.

10 The ALJ issued an unfavorable decision on March 24, 2011. The Appeals
11 Council denied review on May 5, 2012. This action followed. The parties have
12 consented to the jurisdiction of the magistrate judge, and have filed their
13 respective briefs along with the Administrative Record. [AR]

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15 II. ISSUES

16 Plaintiff asserts that the orthopedic consultative examiner's opinion is
17 entitled to little weight, since the examiner did not review any of Plaintiff's
18 existing medical records, including several corroborating MRI's.

19 Plaintiff next asserts that the ALJ committed reversible error by failing to
20 consider the EMG testing which showed that Plaintiff suffered from right carpal
21 tunnel syndrome. The Plaintiff faults the ALJ for finding that the condition was
22 "non-severe".

23 Finally, Plaintiff claims that the ALJ failed to fairly assess his credibility.

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1 III. DISCUSSION

2 The court finds that the orthopedic consultative examiner's assessment of
3 Plaintiff's residual functional capacity could well have been affected by a full
4 review of Plaintiff's medical records, including multiple radiology reports.
5 However, the one-time medical examiner was not provided any of Plaintiff's
6 medical records for his consideration.

7 Multiple MRI's of Plaintiff's lumbar spine reflect that Plaintiff suffers
8 from a severe lumbar spine impairment which causes severe canal stenosis,
9 spinal stenosis, and nerve root involvement. The July, 2009 MRI report alone
10 could well have affected the examining doctor's residual functional capacity
11 assessment, which found Plaintiff capable of performing medium level work
12 with an ability to lift 25 pounds frequently and 50 pounds occasionally.

13 Although defendant argues that Plaintiff bears the burden of showing a
14 functional restriction, and that the medical examiner found a normal range of
15 motion of the cervical spine and overall, the opinion of the one-time examiner is
16 not entitled much weight, given that multiple MRIs may well have caused the
17 examiner to alter his assessment of Plaintiff's residual functional capacity,
18 including the excess pain analysis. The examining doctor's opinion was not
19 based on substantial evidence, rather it was based on a single examination.

20 Secondly, the court finds that more should have been done to develop the
21 record with regards to the carpal tunnel syndrome, which was diagnosed by
22 EMG. A consultative examination by a neurologist would have shed light on
23 whether Plaintiff's suffers functional limitations from carpal tunnel syndrome.
24 Tonapetyan v. Halter, 242 F.3d 1144 (9th Cir. 2002).

25 The court additionally finds that the ALJ's credibility assessment was
26 extremely weak, not supported by the record, and hardly clear and convincing.
27 Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996). The one paragraph
28 credibility assessment (A.R. 17) cites "evidence" which has no bearing on

1 Plaintiff's credibility (e.g. his professed English speaking ability; an old
2 Worker's Compensation case which the ALJ concluded undermined Plaintiff's
3 current credibility; and Plaintiff's minimal, sporadic activities with his
4 grandchildren which hardly translate into an ability to perform work on a
5 sustained basis). The ALJ's credibility finding was not supported by the record,
6 and nor sufficiently specific. The court is left with an inference that Plaintiff's
7 subjective testimony was arbitrarily rejected. Thomas v. Barnhart, 278 F.3rd
8 947) (9th Circ. 2002).

9 IV. CONCLUSION AND ORDER

10 For the foregoing reasons, the Decision of the Commissioner is reversed,
11 and the matter is remanded for further proceedings pursuant to Sentence Four of
12 42 U.S.C. § 405(g). The Court suggests that the matter be reassigned to a
13 different ALJ, given the faulty credibility analysis of the first ALJ.

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15 DATED: January 8, 2013

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19 STEPHEN J. HILLMAN
20 UNITED STATES MAGISTRATE JUDGE
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